

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMAL S. WRIGHT,

Defendant.

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8:05CR261

MEMORANDUM AND ORDER

This matter is before the court on the objections of the United States of America (“the Government”), Filing Nos. 29 and 37, to the report and recommendation of the United States Magistrate Judge (“magistrate”), Filing No. 28. The magistrate recommends that the defendant’s motion to suppress evidence, Filing No. 15, be granted. Under 28 U.S.C. § 636(b)(1)(C), the court makes a de novo determination of those portions of the report or recommendations to which the parties object. Accordingly, the court has reviewed the record, briefs,<sup>1</sup> and exhibits, including the transcript of the hearing on the motion. Filing No. 22, Hearing Transcript (“H’rg. Tr.”). The court concludes that the government’s objection should be overruled and that the report and recommendation of the magistrate should be adopted in its entirety.

The defendant is charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The facts are adequately set out in the magistrate’s report and recommendation and need not be fully repeated here. Briefly, the record shows that the defendant, Jamal Wright, was stopped, searched, and arrested while walking in the vicinity of 28th Street and Meredith Avenue in Omaha, Nebraska, on April 15, 2005. The

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<sup>1</sup>The government did not submit a brief in support of its objections.

circumstances leading to the incident included a dispatch to patrolling officers that a retail establishment located at 4521 North 30th St. had been robbed and that the perpetrator was an older black male wearing a black outfit, who left the store on foot heading in a westerly direction. The arresting officer testified that the encounter with defendant occurred approximately two blocks east of the store and that Wright was heading in an easterly direction. The evidence also shows that the encounter occurred within minutes of the dispatch. The officer testified that the defendant is a young, black male who was wearing a black jacket. The parties agree that the incident was not a consensual encounter. The magistrate found that the officer's observations did not amount to a reasonable suspicion, under the totality of the circumstances, that Wright had committed or was committing a crime.

The government objects to the magistrate's conclusion that the officer did not have reasonable suspicion to detain Wright. The court has reviewed the government's objections and finds they lack merit. The court agrees with the magistrate's assessment. The officer had been told the suspect was an older black male wearing black who was heading east. Defendant matched the description only with reference to his race and apparel. The magistrate notes, and the court agrees, that denial of this motion to suppress would render valid the detention and search of any person with some questionable resemblance to a suspect "who happened to be present within two blocks of a robbery." Hr'g. Tr. at 5. Accordingly, the court finds the government's objections should be overruled and the report and recommendation of the magistrate should be adopted in its entirety.

IT IS ORDERED:

1. The government's objections, Filing Nos. 29 and 37, to the magistrate's report and recommendation, Filing No.28, are overruled.

2. The report and recommendation of the magistrate, Filing No. 28, is adopted.

3. Defendant's motion to suppress, Filing No. 15, is granted.

DATED this 11th day of January, 2006.

BY THE COURT:

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s/ Joseph F. Bataillon

UNITED STATES DISTRICT JUDGE